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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,205	08/22/2005	Aarnoud Willem Eversdijk	2837/73736/NHZ	3683
7590	01/17/2008		EXAMINER	
Norman H Zivin Cooper & Dunham 1185 Avenue of the Americas New York, NY 10036			DUNN, DANIELLE N	
			ART UNIT	PAPER NUMBER
			2875	
			MAIL DATE	DELIVERY MODE
			01/17/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/522,205	EVERSDIJK, AARNOUD WILLEM	
	<b>Examiner</b> Danielle Dunn	<b>Art Unit</b> 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 October 2007.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date. _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Response to Amendment***

Applicant's amendment filed on 10/15/2007 has been entered. Claims 1, 2 and 7 have been amended. No claims have been cancelled. No claims have been added. Claims 1-14 are still pending in this application, with claims 1 and 7 being independent.

### ***Claim Objections***

1. Claim 2 is objected to because of the following informalities: Lines 3-5 of **claim 2** recite "the second part being supported on the rim or stop **and so that** the first part can be placed", it appears as if the Applicant wishes to recite "the second part being supported on the rim or stop **so that** the first part can be placed". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-4, 7, 10, 12 and 14** are rejected under 35 U.S.C. 102(b) as being anticipated by Chadwick (US 5,170,975).

With respect to **claims 1-4**, Chadwick teaches a fitting for a lamp (articulated arm 14) which is provided with a rim or stop as part of the fitting (U-shaped bracket 18) for

supporting a lamp cap (bottom of lamp 20) and a locking element (bolt 13 and wing nut 21) for locking a lamp cap onto the rim or stop (Col. 2, ln. 20-26). Chadwick also teaches the fitting being provided with an adjustment means for adjusting the position of the lamp cap with respect to the rim or stop (gear wheel 28 is the adjustment means, Col. 2, ln. 39-42). Chadwick teaches the adjustment means having a first part (lower end of arm 14b; Fig. 1), a first end (the upper end of arm 14b) which is movably connected to the rim or stop (the arms 18 and 19 of the U-shaped bracket 18 have a bolt 13 about which the arm 14 pivots relative to the brackets 18, 19; Col. 2, ln 18-20). Chadwick teaches the adjustment means having a first (arm 14b) and second part (arm 14a) which are pivotably connected to one another (as shown in Fig. 1).

Chadwick teaches the second part being supported on the rim or stop so that the first part can be placed between a first position substantially parallel to the second part (when arm 14 is compressed, it is in position that is substantially parallel to the second part) and a second position at an angle to the second part (as shown in Fig. 1). Chadwick teaches the adjustment means being provided with a locking means (wing nuts 26 and 30) for locking the first part in its second position (Col. 2, ln 41-43). Chadwick teaches the first part being provided with a lug or catch for engaging a recess or groove on the outer side of the fitting (As shown in Fig. 2, the upper part of arm 14b is provided with a bolt 13 for engaging a recess on the outer side of the fitting; also as shown in Fig. 2 washers 12 are provided on the upper part of arm 14b for engaging a groove on the outer side of the fitting).

Regarding the claims recitation that the instant invention "can be placed between a first position substantially parallel to the rim or stop and a second position at an angle to said rim or stop wherein the adjustment means allows for the adjustment of the position of the lamp cap with respect to said rim or stop", the applicant is advised that it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation, but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

With respect to **claim 7 and 12**, Chadwick teaches an adjustment element for a fitting for a lamp for adjusting the position of a lamp cap with respect to a fitting (gear wheel 28; shown in Fig. 1). Chadwick teaches the fitting being provided with a first part (arm 14b) which is intended to make contact with a lamp cap or the pedestal of a lamp (arm 14b make contact with the lamp cap and pedestal of lamp 20 as shown in Fig. 1). Chadwick also teaches a second part for supporting the adjustment element on a rim or stop of a fitting (arm 14a supports the gear wheel 28 on a rim or stop of the articulated arm 14 as shown in Fig. 1). Chadwick teaches that the first (arm 14b) and second parts (arm 14a) are resiliently or pivotably connected to one another for the purpose of adjusting the angle between the first and second part (shown in Fig. 1) wherein the adjustment of the angle serves to adjust the position of the lamp cap with respect to the rim or stop (shown in Fig. 1; Col. 2, ln. 20-26, 39-42).

With respect to **claims 10 and 14**, Chadwick teaches the first part being provided with a lug or catch for engaging a recess or groove on the outer side of the fitting (As shown in Fig. 2, the upper part of arm 14b is provided with a bolt 13 for engaging a recess on the outer side of the fitting; also as shown in Fig. 2 washers 12 are provided on the upper part of arm 14b for engaging a groove on the outer side of the fitting). Chadwick teaches the adjustment element being provided with one or more engagement members which are intended to engage on a lamp cap or a pedestal of a lamp cap (U-shaped bracket 18).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 5-6, 8-9, 11 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Chadwick (US 5,170,975) as applied to claims 1 and 7 above.

With respect to **claims 5-6 and 8-9**, it would have been obvious to design the parts in the shape of an arc having the parts describing a complete circle or part of a circle and to have the parts designed in such a way that they describe an arc which is larger than a semicircle and smaller than a complete circle, since it has been held by the courts that a change in shape or configuration, without any criticality, is nothing more than one of numerous shapes that one of ordinary skill in the art will find obvious

to provide based on the suitability for the intended final application. See *In re Dailey*, 149 USPQ 47 (CCPA 1976). It appears that the disclosed device would perform equally well shaped as disclosed by Chadwick.

With respect to **claim 11**, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to have the adjustment element comprise spring steel, since it has been held by the courts that selection of a prior art material on the basis of its suitability for its intended purpose is within the level of ordinary skill. *In re Leshing*, 125 USPQ 416 (CCPA 1960) and *Sinclair & Carroll Co. v. Interchemical Corp.*, 65 USPQ 297 (1945).

With respect to **claim 13**, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to have the auxiliary arms punched and flanged out of one of the first and second parts, since it has been held by the courts that patentability of a product does not depend on its method of production. If the product in the product-by-process claim is disclosed, or suggested, by the Prior Art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

#### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 2 and 7 have been considered but are moot in view of the new ground(s) of rejection.

7. Regarding the Examiner's rejection of claims 3-6 and 8-14 the applicant present no arguments, except stating that such claims depend directly or indirectly from independent claims 1 or 7 and would be allowable when/if the independent claims are allowed.

8. The Examiner is hereby advising the applicant that, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). In this case, the claims are drawn to a fitting and all recitation of its use (i.e. "for a lamp", "for supporting a lamp cap...", "for locking a lamp cap...", "for adjusting the position of the lamp..." etc.) is merely functional language.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 2,689,909 teach a holder for a lamp. US 2,118,785 teach an adjustable extension socket. US 3,564,235 teach a light fixture.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

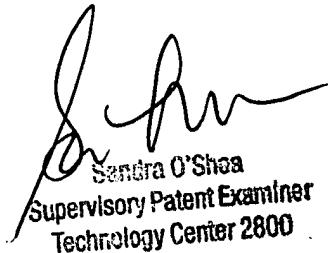
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Dunn whose telephone number is 571-270-3039. The examiner can normally be reached on Monday thru Friday 9:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DND  
1/9/08



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